

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA, <i>et al.</i>)	
)	
Plaintiffs,)	
)	
v.)	Case No. 4:05-cv-00329-GKF-PJC
)	
TYSON FOODS, INC., <i>et al.</i>)	
)	
Defendants.)	

**DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTIONS IN
LIMINE PERTAINING TO ALTERNATE SOURCES OF PHOSPHORUS AND
BACTERIA TO THE IRW [Dkt. No. 2436] AND BACTERIAL OR PHOSPHORUS
LEVELS IN OTHER WATERSHEDS [Dkt. No. 2411]**

EXHIBIT 5
Timothy Sullivan Deposition Excerpts

TIMOTHY J. SULLIVAN, Ph.D., VOLUME II, 4-8-09

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1 IN THE UNITED STATES DISTRICT COURT FOR THE
2 NORTHERN DISTRICT OF OKLAHOMA

3
4 W. A. DREW EDMONDSON, in his)
capacity as ATTORNEY GENERAL)
5 OF THE STATE OF OKLAHOMA and) 08:43:24
OKLAHOMA SECRETARY OF THE) 08:43:24
6 ENVIRONMENT C. MILES TOLBERT,))
in his capacity as the)
7 TRUSTEE FOR NATURAL RESOURCES))
FOR THE STATE OF OKLAHOMA,)
8)
Plaintiff,)
9)
vs.) 4:05-CV-00329-TCK-SAJ
10) 08:43:24
TYSON FOODS, INC., et al,) 08:43:24
11)
Defendants.)

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13 - - - - -

14
15 VOLUME II VIDEOTAPED DEPOSITION OF TIMOTHY J. 08:43:24
16 08:43:24
17 SULLIVAN, Ph.D., produced as a witness on behalf of
18 the Plaintiffs in the above styled and numbered
19 cause, taken on the 8th day of April, 2009, in the
20 City of Tulsa, County of Tulsa, State of Oklahoma, 08:43:24
before me, Karla E. Barrow, a Certified Shorthand 08:43:24
21 Reporter, duly certified under and by virtue of the
22 laws of the State of Oklahoma.

23
24 08:43:24
25 08:43:24

TULSA FREELANCE REPORTERS
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TIMOTHY J. SULLIVAN, Ph.D., VOLUME II, 4-8-09**258****A P P E A R A N C E S**

1			
2			
3			
4	FOR THE PLAINTIFFS:	MS. KELLY HUNTER BURCH	
		Assistant Attorney General	
5		313 N.E. 21st Street	08:43:24
		Oklahoma City, OK 73105	08:43:24
6			
7	FOR TYSON FOODS:	MR. MICHAEL BOND	
		Attorney at Law	
8		234 East Millsap Road	
		Suite 400	
9		Fayetteville, AR 72703	
10	FOR CARGILL:	MR. COLIN TUCKER	
		Attorney at Law	08:43:24
11		100 West 5th Street	08:43:24
		Suite 400	
12		Tulsa, OK 74103	
13	FOR SIMMONS FOODS:	MS. VICKI BRONSON	
		Attorney at Law	
14		211 East Dickson Street	
		Fayetteville, AR 72701	
15	FOR GEORGE'S:	MS. K.C. TUCKER	08:43:24
		Attorney at Law	08:43:24
16		221 North College	
		Fayetteville, AR 72701	
17	VIDEOGRAPHERS:	Mr. Nick Henson	
18		Ms. Neisha Personette	
19			
20			08:43:24
			08:43:24

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I N D E X

W I T N E S S

P A G E

TIMOTHY J. SULLIVAN, Ph.D.

Continued Direct Examination by Ms. Burch 260

Signature Page

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Reporter's Certificate

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08:43:24

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1 (Whereupon, the deposition began at 8:44
2 a.m.)

3 VIDEOGRAPHER: We are now on the record
4 for Volume II of the deposition of Timothy Sullivan.
5 Today is April 9th, 2009. The time is 8:44 a.m. 08:44:25
6 Counsel, please identify yourselves for the record.

7 MS. BURCH: Kelly Burch, State of
8 Oklahoma.

9 MR. BOND: Michael Bond for Tyson Foods,
10 Tyson Poultry, Tyson Chicken and Cobb-Vantress. 08:44:32

11 VIDEOGRAPHER: And on the phone?

12 MS. TUCKER: K.C. Tucker for the George's
13 defendants.

14 VIDEOGRAPHER: Thank you.

15 TIMOTHY J. SULLIVAN, Ph.D., 08:45:06
16 having been previously duly sworn to tell the truth,
17 the whole truth and nothing but the truth, testified
18 as follows:

19 CONTINUED DIRECT EXAMINATION

20 BY MS. BURCH: 08:45:06

21 Q When were you retained in this case?

22 A A little over three years ago.

23 Q Who retained you?

24 A As a person or as a company?

25 Q Either one. 08:45:15

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TIMOTHY J. SULLIVAN, Ph.D., VOLUME II, 4-8-09

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1 **Q** Do you know whether the EPA has issued any
2 reports identifying sources or quantifying the
3 relative contribution of the sources to water
4 quality issues in the Illinois River watershed?

5 MR. BOND: Object to the form. 02:19:21

6 **A** I believe they had a clean study on Lake
7 Tenkiller a long time ago, but I really don't
8 remember if they made any attempt to provide such
9 quantitative estimates.

10 **Q** (By Ms. Burch) Did you review that report in 02:19:26
11 detail?

12 **A** No. Most of my work focused on the stream
13 system rather than the lake. I know I looked at it.
14 I don't know if I read it or not, and when I looked
15 at it would have been right at the beginning of the 02:20:02
16 case before I knew what I was going to focus on in
17 the case.

18 **Q** Do you have an opinion regarding the relative
19 contribution of sources in the Illinois River
20 watershed of phosphorus to Lake Tenkiller? 02:20:10

21 **A** Do I have an opinion of what the sources are?

22 **Q** Yes.

23 **A** Yes, I have an opinion, but with the caveat
24 that we really need to have the appropriate data to
25 demonstrate what the sources are and to quantify 02:20:20

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TIMOTHY J. SULLIVAN, Ph.D., VOLUME II, 4-8-09**428**

1 what the sources are, and those data are not
2 available. But what my opinion is is that major
3 sources of phosphorus would include wastewater
4 treatment plants, runoff from urban areas, cattle
5 manure, erosion, erosion associated with the stream 02:20:32
6 bank, associated with unpaved roads, associated with
7 construction activities, those would be the biggest
8 sources of erosion, but erosion of all sorts. Row
9 crop erosion, not a lot of row crop in the
10 watershed, but all sources of erosion. Lake 02:21:14
11 Francis, I believe, is a significant source of
12 phosphorus to the Illinois River, below Lake
13 Francis. I would say those are probably the most
14 important sources of phosphorus to the river.

15 **Q** (By Ms. Burch) The most important sources; 02:21:25
16 what do you mean?

17 **A** That quantitatively provide -- that those
18 sources probably provide the bulk of the phosphorus
19 that gets into the river.

20 **Q** How much phosphorus is contributed to Lake 02:22:02
21 Tenkiller from wastewater treatment plants?

22 **A** As a percentage?

23 **Q** As a percentage or as, you know, an estimate
24 of quantity.

25 **A** There are estimates of that. That's a little 02:22:10

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